In the Supreme Court

OF THE

United States

OCTOBER TERM, 1949

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No. 224

REUBEN FRANKLIN BASKIN, by his guardian ad litem and trustee, Catherine Dunn,
Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, KAISER COMPANY, INC., and HARTFORD ACCIDENT & INDEMNITY COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI
to the District Court of Appeal of the State of California, First Appellate District, Division Two
and
BRIEF IN SUPPORT THEREOF.

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INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, KAISER COMPANY, INC., and HARTFORD ACCIDENT & INDEMNITY COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI
to the District Court of Appeal of the State of California, First Appellate District, Division Two.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Your petitioner, Reuben Franklin Baskin, by his guardian ad litem and trustee, Catherine Dunn, prays

that a writ of certiorari issue to review the judgment entered January 11, 1949, in the District Court of Appeal of the State of California, First Appellate District, Division Two, in the above entitled cause. (R. 92-98.) Hearing thereon was denied by the Supreme Court of California on March 10, 1949. (R. 99.) Time within which to file a petition for certiorari herein has been extended by orders of this Court to August 1, 1949. (R. 100.)

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioner filed, with respondent Industrial Accident Commission of the State of California, his claim for compensation under the California Workmen's Compensation Act [*Labor Code*, §§ 3201-6149 (Deering's 1943)] for accidental injuries occurring on December 10, 1945, while he was employed by respondent Kaiser Company, Inc., in Richmond, California, and resulting in his total and permanent disability, both physically and mentally. (R. 2-3.)

His claim was dismissed for want of jurisdiction by respondent Commission on March 31, 1948, on the sole ground that "The claim asserted herein is within the exclusive admiralty jurisdiction of the Federal Government and therefore outside the scope of jurisdiction of the California Industrial Accident Commission". (R. 87.)

A petition for rehearing, filed before the respondent Commission, was denied by order thereof entered June 17, 1948. (R. 91.)

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A writ of review was granted petitioner by the District Court of Appeal of the State of California, First Appellate District, Division Two. The question presented to that Court for decision was stated to be as follows: "Only if the state could not constitutionally provide compensation for petitioner's injuries, may the order of respondent Commission be sustained". (R. 93.) On January 11, 1949, the Court held "* * * that the application of state law would directly invade the federal jurisdiction" (R. 96), and affirmed the order of the Commission. (R. 98.) A petition for rehearing by that Court was denied February 10, 1949. (R. 98.)

The Supreme Court of the State of California thereafter and on March 10, 1949, denied a petition for hearing therein, one justice voting for a hearing. (R. 99.)

There is no dispute over the facts relating to the matter presented in this petition. They are summarized by the District Court of Appeal as follows (R. 92):

> "Petitioner was a materialman employed from March, 1943, until December 10, 1945, by respondent Kaiser Company, Inc., at its Shipyard No. 3. His work during that time was entirely on shore (or on ships under construction) with the exception of two or three tours of short duration when he was sent to work aboard ships being repaired.
>
> "On December 10, 1945, the S.S. 'William Moultrie' was undergoing repairs. She was one of three vessels tied up side by side at the shipyard wharf

in San Francisco Bay and was the farthest out. A crane on the wharf moved materials from place to place on these ships. One of the holds on the 'Moultrie' was being repaired. The crane's boom could not reach the planks already on board, to move them from one hold to another, and it became necessary to send men aboard to do so. Despite standing instructions that Baskin should not be sent aboard ships under repair, he was ordered onto the 'Moultrie' to help, and while there fell down a hold and was seriously and permanently injured."

JURISDICTIONAL STATEMENT.

(a) Statutory provision sustaining jurisdiction.

The statute believed to sustain appellate jurisdiction is Tit. 28 U.S.C. § 1257 (3).

(b) State statute, the validity of which is involved.

The State statute under which petitioner claims compensation, and the validity of which as applied is here involved,[1] is the California Workmen's Compensation Act, *Labor Code*, §§ 3201-6149 (Deering's 1943) hereinafter in this petition referred to as the "State Act".

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[1]The District Court of Appeal clearly construed the coverage of this statute to include petitioner, if such was within the reach of the State of California consistently with Article 3, § 2 of the Federal Constitution which extends the jurisdiction of Federal Courts "to all cases of admiralty and maritime jurisdiction", and the Federal Longshoremen and Harbor Workers' Act, 44 Stats. 1424, 33 U.S.C. § § 901-950, which accepts the constitutional line of demarcation between state and federal jurisdiction. See discussion, infra, as to the nature of the case and the rulings below.

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The provisions of the State Act are:

> "* * * an expression of the police power and are intended to make effective and apply to a complete system of workmen's compensation, the provisions of sections 17½ and 21 of Article XX of the Constitution of this State." *Labor Code,* § 3201 (Deering's 1943).

It is further provided that:

> "Liability for the compensation * * * shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of his employment * * *" *Labor Code,* § 3600 (Deering's 1943).
>
> * * *
>
> "The provisions [of the State Act] * * * shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." *Labor Code,* § 3202 (Deering's 1943).

Section 21 of Article XX of the Constitution of the State of California, applied by the State Act, provides that:[2]

> "The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workmen's compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any and all persons to compensate any and all workmen for in-

[2]Sections 17½ and 21 of Article XX of the Constitution of the State of California are set out in full in Appendix A of the brief attached hereto.

jury or disability, and their dependents for death incurred or sustained by the said workmen in the course of their employment, irrespective of the fault of any party."

(c) Date of judgment sought to be reviewed.

The date of the judgment of the District Court of Appeal sought to be reviewed is January 11, 1949. (R. 92-98.) The Supreme Court of California denied petition for hearing of the matter on March 10, 1949. (R. 99.) Time within which to file petition for certiorari herein has been extended to August 1, 1949. (R. 100.)

(d) Nature of the case and the rulings below.

Petitioner's claim for compensation under the State Act was made in the belief that although his injuries were sustained in the furtherance of repair work on a vessel on navigable waters, nevertheless since he was engaged in an ordinary land occupation and aboard the vessel only casually, he was not deprived of the helpful provisions of the State Act, which contains no limit on recovery in cases of permanent total disability.[3]

Following the injury, the employer's insurance carrier (respondent Hartford Accident & Indemnity Company) paid compensation to petitioner under the

[3]Where the injury causes permanent total disability, the State Act permits the workman to receive 65% of his average weekly earnings for 240 weeks, and thereafter, 40% of his average weekly earnings for the remainder of his life. Average weekly earnings are to be taken at not less than $15.00 nor more than $46.16. Petitioner was earning more than the maximum, so his lifetime pension would on this basis be $18.46 per week.

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Federal Longshoremen and Harbor Workers' Act, 44 Stats. 1424, 33 U.S.C. §§ 901-950 (hereinafter in this petition referred to as the "Federal Act"). The Federal Act by its terms limits total recovery to $7500, even though there may be permanent total disability or death. [33 U.S.C., § 914(m)].[4] Petitioner at no time filed any claim under the Federal Act and there was never any hearing, fact-finding or award made under that Act. Respondent carrier had the employer's coverage under both the State Act and the Federal Act, and its decision on December 17, 1945 (7 days after the accident) to pay compensation under the Federal Act was not joined in by petitioner who was then unconscious and not expected to live. (R. 11; 16-17; 60.) Petitioner has accepted the compensation payments made to him, but has consistently asserted throughout his right to compensation under the State Act, and to treat payments made as on account of State benefits.

The federal question involved was specifically raised in all the proceedings below, and the District Court of Appeal directly ruled on it as the only question involved. (R. 92-98.)

Respondent Commission held that:

> "The claim asserted herein is within the exclusive admiralty jurisdiction of the Federal Government and therefore outside the scope of jurisdiction of the California Industrial Accident Commission." (R. 87.)

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[4]The Federal Act has now been amended to provide that the limitation shall not apply to cases of permanent total disability or death. The amendment is applicable only to injuries occurring after its effective date, namely, June 24, 1948 (see note under 33 U.S.C.A. § 906).

Accordingly, respondent Commission "dismissed for want of jurisdiction". (R. 87.)

The District Court of Appeal stated the question for decision as follows:

> "Only if the state could not constitutionally provide compensation for petitioner's injuries, may the order of respondent Commission be sustained." (R. 93.)

The Court then held "* * * that the application of state law would directly invade the federal jurisdiction" (R. 96), and affirmed the order of the Commission dismissing for want of jurisdiction. (R. 98.)

The Supreme Court of the State of California denied a petition for a hearing therein (R. 99), and the judgment of the District Court of Appeal thus became the final judgment of the highest Court in the State of California in which a decision could be had. The sustaining by that Court of the federal claim against the application of the State Act brings the case directly within 28 U.S.C. § 1257 (3).

(e) Leading case sustaining jurisdiction.

The leading case believed to sustain the jurisdiction of this Court is *Davis v. Department of Labor of Washington* (1942) 317 U.S. 249, 63 S.Ct. 225, 87 L.ed. 246.

QUESTION PRESENTED.

Where a materialman who is engaged in an ordinary land occupation is injured while casually aboard a

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vessel on navigable waters in the furtherance of repair work, may the state constitutionally extend to his permanent total disability the benefits of its workmen's compensation statute?

REASON RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The District Court of Appeal of the State of California has decided a federal question of substance in a way not in accord with applicable decisions of this Court. The decision of the Court below that the application of the State Act to this case "would directly invade the federal jurisdiction" is in direct conflict with the decisions of this Court in:

Bethlehem Steel Co. v. Arthur J. Moore (1948) 335 U.S. 874, 69 S.Ct. 239, 93 L.ed. 123, aff'g 323 Mass. 462, 80 N.E. (2d) 478;

Davis v. Department of Labor of Washington (1942) 317 U.S. 249, 63 S.Ct. 225, 87 L.ed. 246.

In the *Davis* case, it was determined that there is a presumption of constitutionality attendant upon a state workmen's compensation act which requires a state to take jurisdiction of claims filed in its tribunals when such are in the "twilight zone" between such state acts and the Federal Act.

In the *Bethlehem Steel* case, it was determined that a workman ordinarily employed on land but occasionally going on a vessel to aid in repair work is within the "twilight zone", and thus entitled to the presump-

tion of constitutionality.[5] The *Bethlehem Steel* case decides the exact question which was before the Court below, i.e., whether the "twilight zone" includes occasional acts in furtherance of the repair of a previously finished vessel by one engaged in an ordinary land occupation, diametrically opposite to its determination by that Court.

Dated, Oakland, California,
July 25, 1949.

Respectfully submitted,

REUBEN FRANKLIN BASKIN, by his guardian ad litem and trustee, Catherine Dunn,
Petitioner.

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[5]The *Bethlehem Steel* case was decided by this Court in December, 1948, after the matter herein prayed to be reviewed had been submitted to the District Court of Appeal. That Court did not, accordingly, have the benefit of the decision, nor, because of the time element involved, was it available either to it on the petition for rehearing or to the Supreme Court of California on the petition for hearing there. Thereafter, on May 28, 1949, petitioner called this decision to the attention of respondent Commission, but without success.

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Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINION OF COURT BELOW.

The opinion of the District Court of Appeal of the State of California, First Appellate District, Division Two (R. 92-98), was filed January 11, 1949 and is reported as *Baskin v. Industrial Accident Commission et al.*, 89 A.C.A. 694, 201 P. (2d) 549.

JURISDICTION.

1. The date of the judgment sought to be reviewed is January 11, 1949. (R. 92-98.) Hearing thereon was denied by the Supreme Court of the State of California on March 10, 1949. (R. 99.) Time within which to file petition for certiorari herein has been extended to and including August 1, 1949. (R. 100.)

2. The statutory provision believed to sustain the jurisdiction of this Court is Tit. 28 U.S.C. § 1257(3).

3. The grounds upon which the jurisdiction of this Court is based and the leading case believed to sustain the jurisdiction of this Court are set forth under the heading "Jurisdictional Statement" in the preceding petition, pages 4 to 8, to which reference is made for the sake of brevity.

STATEMENT OF THE CASE.

For the sake of brevity, we refer to the preceding petition, pages 2 to 4.

STATEMENT OF ERROR.

The District Court of Appeal of the State of California erred in holding that the general admiralty law rendered the California Workmen's Compensation Act, *Labor Code,* §§ 3201-6149 (Deering's 1943) (hereinafter in this brief referred to as the "State Act") inapplicable to petitioner who was engaged in an ordinary land occupation and was injured while

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casually aboard a vessel on navigable waters in the furtherance of certain repair work.

ARGUMENT.

I. THERE IS A PRESUMPTION OF CONSTITUTIONALITY ATTENDANT UPON A STATE WORKMEN'S COMPENSATION ACT WHICH REQUIRES THE STATE TO TAKE JURISDICTION OF CLAIMS FILED IN ITS TRIBUNALS WHEN SUCH ARE WITHIN THE "TWILIGHT ZONE" BETWEEN THE STATE ACT AND THE FEDERAL ACT.

This Court in the case of *Davis v. Department of Labor of Washington*[1] enunciated the rule of a "twilight zone" between state workmen's compensation acts and the Federal Longshoremen and Harbor Workers' Act., 44 Stats. 1424; 33 U.S.C.A. §§ 901-950 (hereinafter in this brief referred to as the "Federal Act"). Faced with the problem of situations in which a case might fall under either such a state act or the Federal Act by reason of particular facts, "we must give great—indeed, presumptive—weight to the conclusions of the appropriate federal authorities and to the state statutes themselves." (317 U. S. at 256).

> "Where there has been a hearing by the federal administrative agency * * * our task proves easy. There we are aided by the provision of the federal act, 33 USCA § 920, which provides that in proceedings under that act, jurisdiction is to be 'presumed in the absence of substantial evidence to the contrary'." (317 U.S. at 256).

"In the instant case [where, as here, the proceedings were under a state act and not the

[1](1942) 317 U.S. 249, 63 S.Ct. 225, 87 L.ed. 246.

Federal Act] we do not enjoy the benefit of federal administrative findings and must therefore look solely to state sources for guidance. We find here a state statute which purports to cover these persons, and which indeed does cover them if the doubtful and difficult factual questions to which we have referred are decided on the side of the constitutional power of the state." (317 U.S. at 257).

"Under all the circumstances of this case [*Davis*] we will rely on the presumption of constitutionality in favor of this state enactment; for any contrary decision results in our holding the Washington act unconstitutional as applied to this petitioner. A conclusion of unconstitutionality of a state statute can not be rested on so hazardous a factual foundation here, any more than in the other cases cited." (317 U.S. at 258).

II. A WORKMAN ENGAGED IN AN ORDINARY LAND OCCUPATION BUT INJURED WHILE CASUALLY ABOARD A VESSEL ON NAVIGABLE WATERS IN THE FURTHERANCE OF REPAIR WORK IS IN THE "TWILIGHT ZONE".

The basic question presented by this case is whether the "twilight zone" includes a land workman like petitioner whose momentary presence aboard a vessel on navigable waters in furtherance of repair is incidental and *de minimis* in the extreme. The Court below held it did not.

The precise point has now been decided to the contrary by this Court, in the recent case of *Bethlehem*

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Steel Co. v. Arthur J. Moore.[2] It was there held in a per curiam opinion affirming the Supreme Judicial Court of Massachusetts,[3] that such a workman was within the "twilight zone" and entitled to compensation under a state workmen's compensation act. Both Courts rested their decision on the *Davis* case. That case and the *Bethelehem Steel* case require reversal of the Court below.

In the *Bethlehem Steel* case, the injured workman was a rigger who spent the major portion of his time on the piers but occasionally went aboard vessels. At the time of injury he was aboard a vessel on navigable waters, engaged in furthering its repair. The Supreme Judicial Court of Massachusetts, whose judgment was affirmed by this Court, carefully pointed out that, prior to the *Davis* case, it would have reached the opposite result under *Southern Pacific Co. v. Jensen* (1917) 244 U.S. 205, 37 S.Ct. 524, 61 L.ed. 1086. The Massachusetts Court concluded, however, that:

> "* * * the situation was definitely altered by the decision of the Supreme Court of the United States in Davis v. Department of Labor * * *" (80 N. E. (2d) at 480.)

and that there was now included:

> "* * * within the twilight zone the case of a workman engaged in an ordinary land occupation although occasionally going upon a dry dock or vessel to make repairs." (80 N.E. (2d) at 481).

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[2](December, 1948) 335 U.S. 874, 69 S.Ct. 239, 93 L.ed. 123, aff'g. 323 Mass. 462, 80 N.E. (2d) 478.

[3]*Moore's Case* (S. J. Ct. Mass., 1948) 323 Mass. 462, 80 N.E. (2d) 478.

In the light of the *Davis* and *Bethlehem Steel* cases, petitioner was clearly entitled to his choice of the State Act to compensate his permanent total disability. It has been properly said of the decision below that:[4]

> "The court did not refer to the recent case decided by the Massachusetts Supreme Judicial Court and affirmed by the Supreme Court of the United States, Moore's Case, 323 Mass. 462, 80 N.E. 2d 478, affirmed, 69 S.Ct. 239 (Dec. 6, 1948). It cited primarily older cases decided before the leading case of Davis v. Dept. of Labor, 317 U.S. 249, 63 S.Ct. 225 (1942), and disposed of that case with the finding that the petitioner did not bring himself within the twilight zone. A materialman is certainly not a longshoreman. He is hardly a harbor worker when his work was entirely on shore, except for 'two or three tours of short duration when he was sent to work aboard ships being repaired'. 'Harbor' workers connote regular work on boats in harbors, not on land. At least, there is doubt, and the twilight zone doctrine should have given the plaintiff his choice."

III. THE COURT BELOW ERRED IN FAILING TO RECOGNIZE THE PRESUMPTION OF CONSTITUTIONALITY IN FAVOR OF THE STATE ACT, AND IN DETERMINING THE MATTER BY REFERENCE SOLELY TO FEDERAL SOURCES RATHER THAN SOLELY TO STATE SOURCES.

The Court below posed the question for decision as "Only if the state could not constitutionally provide

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[4] 3 NACCA Law J. 170-171. See also 17 Geo. Wash. L. Rev. 391-393; 33 Minn. Law Rev. 421-423.

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compensation for petitioner's injuries, may the order of respondent Commission be sustained." (R. 93.) There is no specific reference to the state statute involved nor to the federal constitutional provision against which its validity is to be measured. It is clearly assumed throughout, however, as is the fact, that the State Act covers petitioner. Reference to the State Act shows that its provisions are:

> "**** an expression of the police power and are intended to make effective and apply to a complete system of workmen's compensation, the provisions of Sections 17½ and 21 of Article XX of the Constitution of this State."[5] *Labor Code,* § 3201 (Deering's 1943).

It is clearly stated, moreover, that the validity of the State Act is being measured against "the federal jurisdiction" (R. 96), which may be taken as a reference both to Article 3, § 2 of the Federal Constitution, which extends the jurisdiction of Federal Courts "to all cases of admiralty and maritime jurisdiction", and to the Federal Act which accepts the constitutional line of demarcation between state and federal jurisdiction.[6]

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[5]Section 21 of Article XX of the Constitution of the State of California provides that:

> "The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution to create and enforce a liability on the part of any and all persons to compensate any and all workmen * * *"

See also Paragraph (b) under Jurisdictional Statement in the petition to which this brief is attached, and Appendix A hereto for Sections 17½ and 21 of Article XX in full.

[6]*Davis v. Department of Labor of Washington* (1942) 317 U.S. 249, 256, 63 S.Ct. 225, 87 L.ed. 246, 250.

The Court below failed to recognize that petitioner was within the "twilight zone", saying expressly:

> "Petitioner's case instead of being in the 'twilight zone' is definitely on the same side of the line as the numerous cases * * * which have followed the rule which *Southern Pacific Co. v. Jensen* * * * laid down * * *" (R. 97.)

Inasmuch as petitioner's case is in the "twilight zone", as the *Bethlehem Steel* case makes abundantly clear, the Court below was required to extend to him the "presumptive weight" (317 U.S. at 256) of the State Act itself, and to "look solely to state sources for guidance" (317 U.S. at 257) in determining the constitutional problem. It did neither. Instead of recognizing a presumption of constitutionality of the State Act (in fact such is never even mentioned) and looking solely to state sources for guidance in deciding the constitutional question, the Court below determined the question by reference to the Federal Act and to decisions under the Federal Act which of necessity rest on the statutory presumption of federal jurisdiction contained in that Act itself.

Thus, the Court below, in treating the factual situation of a land employee only casually aboard a vessel, notes that "Substantially the same argument was considered in *Parker v. Motor Boat Sales, Inc.*, 314 U. S. 244 [62 S. Ct. 221, 86 L. Ed. 184] * * *" (R. 94), in which case an exercise of federal jurisdiction was sustained. There was no recognition by the Court below that the *Parker* case, as explained in the *Davis* case, rests on the statutory presumption of federal jurisdiction, certain particular facts in that

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case being sufficient to sustain the action of the federal administrative agency. That being so, the *Parker* case may not be taken as controlling a factual situation presented not to such a federal agency but to a state tribunal. The use of this authority was not "Giving the full weight to the presumption [of the constitutionality of the State Act] and resolving all doubts in favor of the [State] Act" (317 U.S. at 258). It was instead thrusting the burden of a presumption of federal jurisdiction upon petitioner, even though he was not claiming under the Federal Act.

This misconception of the law perpetuated the error of the trial referee who had likewise determined on the basis of the *Parker* case that petitioner's status as a land employee and the casual and *de minimis* character of his presence aboard the vessel were immaterial on the jurisdictional question.[7]

That the *Parker* case may not be so viewed, is explained by this Court in the *Davis* case, where it was said of *Parker:*

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[7]See Trial Referee's Report on Applicant's Petition for Rehearing (R. 88):

"But there are additional facts which could conceivably distinguish this case from the usual 'repair' case. The applicant in this case did not usually or customarily work in the repair of vessels; on the contrary, he was predominantly a land employee, and it was only on rare occasions and for short periods of time that he was assigned tasks on board ship; and furthermore, this general assignment to work on land was by deliberate design of the supervisory authority. What significance have these additional facts on the jurisdictional question?

"I think it is clear that they have none. Maritime service is no less maritime because it is performed at rare intervals, or by a workman who is better suited for work on land.

"Parker v. Motor Boat Sales, Inc., 314 U.S. 244 is directly in point * * *"

"* * * we must give great—indeed, presumptive—weight to the conclusions of the appropriate federal authorities * * * Where there has been a hearing by the federal administrative agency entrusted with broad powers of investigation, fact finding, determination and award, our task proves easy. There we are aided by the provisions of the federal act, 33 U.S.C.A. 920, which provides that in proceedings under that act, jurisdiction is to be presumed in the absence of substantial evidence to the contrary. Fact findings of the agency, where supported by the evidence, are made final. Their conclusion that a case falls within the federal jurisdiction is therefore entitled to great weight and will be rejected only in cases of apparent error. *It was under these circumstances that we sustained the Commissioner's findings in Parker v. Motor Boat Sales, supra.*"[8]

CONCLUSION.

The decision of the District Court of Appeal is clearly not in accord with controlling decisions of this Court. Its failure to recognize that petitioner is within the "twilight zone" frustrates the very purpose of the *Davis* case to free the injured employee from doubt as to which act covers his disability and to permit him to choose, and be right in his choice.

Petitioner is a young man who has been totally and permanently disabled for life. The State Act under which he admittedly worked day in and day out for almost three years for respondent employer provides

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[8]Italics supplied.

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lifetime compensation for his permanent total disability. This feature of the Act was designed expressly to compensate those who, like him, sustain such disability while industrially employed.

Petitioner has sought with all the means at his disposal to secure his award under the State Act, relying on this Court's enunciation of the "twilight zone" doctrine in the *Davis* case. The applicability of that doctrine to his situation has become perfectly clear since this Court's decision in the *Bethlehem Steel* case, a decision not available to the state tribunals at the time petitioner's case was before them.

We respectfully submit that certiorari should be granted herein, and the judgment below reversed on the basis of the *Davis* and *Bethlehem Steel* cases.

Dated, Oakland, California,
July 25, 1949.

Respectfully submitted,
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(Appendix A Follows.)

Appendix A

EXCERPTS FROM ARTICLE XX OF THE CONSTITUTION OF THE STATE OF CALIFORNIA.

"Sec. 17½. The Legislature may, by appropriate legislation, provide for the establishment of a minimum wage for women and minors and may provide for the comfort, health, safety and general welfare of any and all employees. No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon any commission now or hereafter created, such power and authority as the Legislature may deem requisite to carry out the provisions of this section."

"Sec. 21. The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workmen's compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workmen for injury or disability, and their dependents for death incurred or sustained by the said workmen in the course of their employment, irrespective of the fault of any party. A complete system of workmen's compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workmen and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workmen in the course of their employment, irrespective of the fault of any

party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall

be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workmen's compensation, as herein defined.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed."